

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 44/CHNY/2021

निर्धारण वर्ष /Assessment Year: 2012-13

Shri S.Narayanan,

Prop: M/s. Guru Foundations,
No.5, Periya Salai,
Ashok Nagar,
Chennai – 600083.

vs.

The Income Tax Officer,

Non-Corporate Ward-14(1),
Chennai

PAN: ABTPN 1534A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

प्रत्यर्थी की ओर से/Respondent by

: Shri N.R. Krishnamoorthy, FCA

: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 07.07.2022

घोषणा की तारीख/Date of Pronouncement

: 07.07.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-7, Chennai in ITA No.84(T-14)/CIT(A)-7/2015-16 dated 26.06.2019. The assessment was framed by the Income Tax Officer, Non-Corporate Circle-14(1),

Chennai for the assessment year 2012-13 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 27.03.2015.

2. At the outset, the Id.AR for the assessee took us through the order of CIT(A) and stated that the CIT(A) dismissed the appeal simply affirming the order of AO without discussing on facts of the case. He also stated that the CIT(A) has not provided sufficient opportunity of being heard. He drew our attention to the decision of CIT(A), which reads as under:-

“Issue 1:

In *Ajesh Kr.Agarwal vs CIT*, the Rajasthan hon'ble High Court has held that what is to be considered for availing the benefit of Sec.10(37) is that the land in question should have been put to agricultural use by the assessee for the proceeding 2 years. The high court also observed that since assessee was unable to show any evidence for expenditure for sowing of crops or revenue generated by selling the agricultural produce, there was a clear finding of fact which clearly showed that the assessee was not entitled to the benefit of Sec.10(37) of the Act.

A perusal of the A.O's order in para 2 which has been reproduced supra shows that a clear finding of fact that no agricultural activity was carried out in the proceedings 2 years as required by sec 10(37). The case laws relied upon by the appellant are distinguishable on facts and do not apply to the facts and appellant's case.

Hence, A.O.'s order needs no interference and the addition made on this ground stands sustained and appellant's appeal on this grounds fails and is hereby dismissed.”

Issue:2

Sec.2(14) defined the term “Capital asset”. It provides an inclusive definition of capital asset. As per Sec.2(14), capital asset does not include agricultural lands in India within its ambit. But all agricultural lands in India are not out of the scope of capital asset such as – agricultural lands within the jurisdiction of a municipality or Cantonment Board having a population of 10,000 or more. The A.O in her order has clearly made a finding of fact that the impugned land is classified as “Residential class-I, Type-I and that it is situated within the limits of Mamallapuram Town Planning. Therefore, the land in question does not qualify to be an “agricultural land”, the sale which is liable for exemption from capital gains.

A.O’s order needs no interfere and appellant once again fails on this ground and liable to be dismissed.

3. When these facts were confronted to Id. Senior DR, he could not controvert the same.
4. After hearing both the sides and going through the order of CIT(A), we noted that the CIT(A) simply affirmed the order of AO without providing sufficient opportunity of being heard by a non-speaking order. Therefore, we set aside the order of CIT(A) and remand the matter back to her file for fresh consideration and for passing a speaking order after allowing reasonable opportunity of being heard to the assessee. The assessee is also directed to file relevant evidences as and when called for, by the CIT(A).

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 7th July, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 7th July, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |